

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

106

**CWP-4231-2016 (O&M)
Date of decision: 26.09.2017**

Ved Parkash Malhotra

....Petitioner

Versus

Food Corporation of India and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. P.S.Thiara, Advocate with
Mr. Apanjyot S. Virk, Advocate for the petitioner.

Mr. Atul Gaur, Advocate with
Mr. Sumeet Goel, Advocate for the respondents.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, the petitioner has challenged the validity of order dated 10/16.11.2015 (Annexure P-9) by which the petitioner's claim for regulating the suspension period from 07.04.2005 to 24.02.2006 and 27.08.2009 to 31.12.2009 as a period spent on duty has been rejected.

2. Petitioner while working as Deputy Manager (Electrical) he was re-designated as Assistant General Manager (Electrical). He was involved in the offences under the Prevention of Corruption Act, 1988 (for short 'P.C.Act'). On 07.04.2005 an FIR was filed under Section 7 and 13(2) of the P.C.Act by the Vigilance Bureau Phase-I, Mohali, Punjab. For launching

criminal proceedings against the petitioner, he was placed under suspension on 07.04.2005 to 24.02.2006 and 27.08.2009 to 31.12.2009. In the criminal proceedings petitioner was convicted on 27.08.2009. Based on the conviction order, the respondents proceeded to dismiss the petitioner from service on 21.12.2009. Petitioner preferred a criminal appeal in which he was acquitted. Had the petitioner was in service he could have attained age of superannuation and retired from service on 31.12.2009. Thus, question of reviewing order of dismissal from service do not arise. Based with these factual aspects whether the petitioner is entitled for regularisation of suspension period as a duty or not? Learned counsel for the petitioner submitted that basis for placing him under suspension is with reference to launching of criminal case for the offences under P.C.Act. In other words, alleged criminal offences are stated to have been committed by the petitioner during the course of his employment. Therefore, respondents suspended the petitioner. Consequent upon acquittal in the criminal case on 20.08.2014 he is entitled for regularisation of the suspension period as duty for all purposes.

3. Per contra, learned counsel for the respondents submitted that respondents have rejected petitioner's claim with reference to Regulation 63 (i) read with 66(8)(b). It was submitted that power is vested with the disciplinary, appellate and reviewing authority's to regulate the suspension period with reference to dismissed or suspended or reinstated employee. Therefore, the respondents authority's have rightly invoked the above regulation and passed the order. Therefore, there is no infirmity. It was

submitted by learned counsel for the respondents submitted that petitioner himself got into trouble and tangled into criminal proceedings. Therefore, the respondents have no role in respect of involvement of the petitioner in a criminal case. Hence the petitioner has not made out a case so as to interfere with the impugned order. Learned counsel for the respondents relied on decision passed in CWP No. 11867 of 2016 decided on 11.08.2017 titled as ***Harbhajan Singh versus Chief Secretary, Punjab Govt. & Others.***

4. Heard learned counsel for the parties.

5. Short question for consideration in the present petition is whether the petitioner is entitled for regularisation of suspension period as duty or not? Having regard to the fact that petitioner was placed under suspension with reference to filing of FIR for the offences under the P.C. Act is with reference to during the course of the employment of the petitioner, in other words, while discharging the duties of the post. Thus, the respondents have invoked the suspension provision with reference to alleged charge that the petitioner is involved for the offences under P.C.Act and it is not a case of private complaint as noticed in ***Harbhajan Singh's*** case (Supra) where he was involved in the offences under Section 376(g) of IPC. Therefore, decision rendered in ***Harbhajan Singh's*** case (supra) is distinguishable with reference to the facts of the present case that the petitioner is involved in the offences of P.C.Act. Moreover, placing the petitioner under suspension and dismissal from service is with reference to criminal proceedings. Since the petitioner is acquitted in criminal case on 20.08.2014, therefore, respondents cannot say that he is not entitled for

regularisation of the suspension period. Annexure P-9 is hereby set aside.

The respondents are hereby directed to regulate the suspension period from 07.04.2005 to 24.02.2006 and 27.08.2009 to 31.12.2009 as a period spent on duty for all purposes. Further if the petitioner submits representation with reference to any service benefits like promotion etc. the same shall be considered by the respondents in accordance with law and pass speaking order within a period of 3 months from the date of representation.

6. With this observation, CWP stands allowed in part.

26.09.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No